

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

CENTRAL ILLINOIS LIGHT COMPANY)	
d/b/a AmerenCILCO)	
)	
CENTRAL ILLINOIS PUBLIC SERVICE)	
COMPANY)	07-0539
d/b/a AmerenCIPS)	
)	
ILLINOIS POWER COMPANY)	
d/b/a AmerenIP)	
)	
Approval of the Energy Efficiency and)	
Demand-Response Plan.)	

**CITIZENS UTILITY BOARD’S RESPONSE TO
AMEREN’S MOTION FOR RECONSIDERATION**

Pursuant to Section 200.190 of the Illinois Commerce Commission's ("ICC" or "Commission") Rules of Practice, 83 Il. Admin. Code 200.190, now come the Citizens Utility Board (“CUB”), by and through its attorneys to respond to Central Illinois Light Company d/b/a Ameren CILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company d/b/a Ameren IP’s (collectively “Ameren,” “the Company” or “the Ameren Illinois Utilities”) Motion for Reconsideration, filed on January 8, 2008.

Introduction

Ameren requests reconsideration of the Administrative Law Judge’s ruling to strike Ameren Exhibits 2.0 and 7.0, the direct and rebuttal testimony of Ameren witness Richard A. Voytas. Ameren Motion at 1. The ALJ removed this testimony from the record in this proceeding after cross-examination by ELPC indicated that Ameren’s discovery responses failed

to divulge a study (the “CEC Study”) on which Mr. Voytas’ rebuttal testimony relied. Tr. at 77-82, 88-89; Ameren Motion at 2.

The ALJ’s ruling was appropriate to the situation. However, for the reasons stated below, the ruling should apply only to Mr. Voytas’ rebuttal testimony, Ameren Ex. 7.0, and the ALJ should reinstate Ameren Ex. 2.0 and its attachments into the record.

Argument

Discovery is the lifeblood of our judicial and regulatory proceedings, necessary to “allow an opposing party to effectively cross-examine an expert witness,” enable attorneys to prepare their cases, eliminate surprises and ensure that judgments rest on their merits. *Leonardi v. Loyola Univ. of Chicago*, 168 Ill. 2d 83, 103 (experts); *Mistler v. Mancini*, 111 Ill. App. 3d 228, 231-32. In addition, collegial relationships and the ability to work productively toward settlement require that parties trust each other to be forthcoming and thorough in responding to discovery. Unfortunately, even inadvertent mistakes can undermine that trust. Thus, it is appropriate that ALJs should provide substantial remedies for failure to disclose documents during discovery.

The ALJ’s decision to strike Mr. Voytas’ rebuttal testimony was proper. Mr. Voytas admits that his rebuttal testimony relied on the undisclosed CEC study. Tr. at 77-78. Thus, the potential prejudice to Intervenor’s who are not able to effectively cross-examine Mr. Voytas, combined with the extremely short timeframe under which the ALJs must act in this proceeding, necessitate the removal of Mr. Voytas’ rebuttal testimony from the record. *Leonardi* at 103; Tr. at 81.

Reinstatement of Mr. Voytas’ direct testimony, and its exhibits, however, is also appropriate. Mr. Voytas’ direct testimony is merely a summary description of the programs

proposed in its attachments, which include Exhibit 2.1, the full description of Ameren's energy efficiency and demand response plan. There is no indication that Ameren based this plan on the undisclosed CEC study, so parties are not prejudiced by its inclusion in the record. In addition, the plan's exclusion would leave an entirely hollow record, essentially forfeiting the proceeding. Thus, it should remain within the record.

Conclusion

For the reasons stated above, CUB believes that the ALJ's decision to strike Ameren witness Voytas' rebuttal testimony was correct, and that Mr. Voytas' direct testimony and its exhibits should be reinstated into the record in this proceeding.

Respectfully submitted,

THE CITIZENS UTILITY BOARD



Anne McKibbin
Attorney
CITIZENS UTILITY BOARD
208 S. LaSalle, Suite 1760
Chicago, IL 60604
(312) 263-4282 x111
(312) 263-4329 fax
amckibbin@citizensutilityboard.org

Dated: this 9th day of January, 2008.